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BY FACSIMILE AND E-FILEING

The Honorable Joel Schneider
United States Magistrate Judge
District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets, Room 1050
Camden, NJ 08101

[REDACTED]
PUBLIC - REDACTED VERSION
August 9, 2012

Re: *Sciele Pharma, Inc., et al. v. Lupin Ltd., et al.*,
C.A. No. 09-037 (RBK) (JS)

Shionogi Pharma, Inc., et al. v. Mylan Inc, et al.,
C.A. No. 10-135 (RBK) (JS)

Your Honor:

This firm along with McGuireWoods LLP represents Mylan Inc. and Mylan Pharmaceuticals Inc. (collectively, "Mylan") in the above-referenced, consolidated actions. We write in response to Shionogi's letter dated July 27, 2012 (D.I. 518), in which Shionogi raises new arguments for its position that the [REDACTED]
[REDACTED]

At the recent discovery hearing, Shionogi did not challenge Mylan's assertion that the [REDACTED]
[REDACTED]

Nor did Shionogi challenge Mylan's view of the law prior to the *In re MSTG* case—the only case—on which Shionogi relied in support of its position. Instead, Shionogi argued that *In re MSTG* broke new ground and resolved the issue before the Court. For the reasons discussed in Mylan's July 20, 2012, letter to the Court (D.I. 505), that clearly was not true. Recognizing this, Shionogi now raises an additional argument and cites new case law. We write only to address Shionogi's new argument that [REDACTED]
[REDACTED]

We respectfully request that the Court consider this reply to allow Mylan to be heard on the new arguments Shionogi has raised.

Shionogi's new arguments are unfounded. First, Shionogi's position that [REDACTED]
[REDACTED] ignores the very documents—indeed, Shionogi's very own submissions—we highlighted for the Court in our July 5, 2012, letter (D.I.

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493).¹ Furthermore, as with the *In re MSTG* decision, the cases Shionogi now cites do not strengthen Shionogi's position.

A. Shionogi's Own Statements Prove that REDACTED

Shionogi's contention that REDACTED
REDACTED ignores the record that Shionogi itself helped create. Exhibit 4 to Mylan's July 5, 2012, letter (D.I. 493) is an exhibit Shionogi's own counsel submitted in support of its motion for a preliminary injunction (D.I. 245, 246 Ex. 6). REDACTED
REDACTED

¹ Record citations refer to Civil Action No. 9-37.

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Therefore, Shionogi's argument that REDACTED
is meritless. As the paragraph quoted above
makes clear, REDACTED

B. The New Cases Cited by Shionogi Are Unavailing.

REDACTED

REDACTED

The Federal Circuit's comment that the
sheds no light on the
Federal Circuit's view on the correctness of considering REDACTED to establish royalties.
See id. Rather, the Court's comment was made in the context of a scathing rebuke to the district
court's approach to determining a reasonable royalty. In the very next sentence, the Federal
Circuit reminded the district court that "this court has acknowledged that the hypothetical
reasonable royalty calculation occurs before litigation and that litigation itself can skew the
results of the hypothetical negotiation." *ResQNet.com*, 594 F.3d at 872 (citing *Hanson*)
(emphasis added).

Indeed, the Federal Circuit in *In re MSTG, Inc.*, cited the *ResQNet.com* decision in
support of its observation that REDACTED

REDACTED

In that case, the Federal Circuit held REDACTED

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REDACTED
REDACTED

Furthermore, the REDACTED court missed the point when it attempted to distinguish REDACTED on the basis that REDACTED an “established royalty” and not a “reasonable royalty.” *Id.* It is the underlying principle expressed by the REDACTED —that is important: REDACTED

REDACTED

Therefore, REDACTED

REDACTED

C. REDACTED

REDACTED

REDACTED

D. Conclusion

Shionogi’s arguments are without merit. Its conclusory assertions of relevance cannot overcome the weight of the law that counsels strongly against requiring production of

REDACTED

We would be happy to answer any questions the Court may have. We appreciate the Court’s consideration of this matter.

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Respectfully,

/s/ Mary B. Matterer

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cc: Counsel of record (via email and ecf)